THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204

STATE OF INDIANA)
)
COUNTY OF MARION)

THOMAS M. RYLE,
Complainant,

DOCKET NO. EMra78010067

vs.

CITY OF INDIANAPOLIS, DEPARTMENT OF TRANSPORTATION,
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Comes now Robert D. Lange, Hearing Officer for the Indiana Civil Rights Commission ("ICRC") and enters his Recommended Findings of Fact, Conclusions of Law, and Order (hereinafter "the recommended decision"), which recommended decision is in words and figures as follows:

(H.I.)

And comes now Complainant, Thomas M. Ryle ("Ryle"), *pro se*, and files his Objection(s) to Recommended Findings of Fact, Conclusions of Law, and Order, which Objections are in words and figures as follows:

(H.I.)

And comes now Respondent, City of Indianapolis, Department of Transportation ("D.O.T."), by counsel, and files its Response to Complainant's Objections to Recommended Findings of Fact, Conclusions of Law, and Order, which Response is in words and figures as follows:

(H.I.)

A hearing on Ryle's Objections was held by ICRC on April 22, 1983. Commissioner David L. Staples was appointed to preside by the Chairman, Everett J. Coleman, who then disqualified himself. Other Commissioners present were Dr. Nedra S. Kinerk, the Vice-Chairperson; Dr. C.T. Boyd, Mr. Ronald R. Lyles, and Ms. Sandra M. Schreiber. Commissioner John C. Carvey was absent. Ryle was present. D.O.T. was represented by counsel, Ms. Felicia A. Wade and Ms. Contance L. Hanahan, Assistants Corporation Counsel, City County Legal Division. Arguments were heard from Ryle, *pro se* and from D.O.T., by counsel, and the cause was taken under advisement.

Having considered the arguments of the parties and being duly advised in the premises, ICRC now finds and rules as follows:

1. The incident leading to Ryle's discharge was the subject of conflicting evidence. The Hearing Officer did not find that Ryle's version was the more credible. We are not persuaded that this was error.

2. Ryle contends that at the time of his discharge, the reason for his discharge offered was that he had threatened his supervisor. He complains of additional reasons being offered later. But,

    a. The official reprimand recording the incident on the day of Ryle's discharge refers not only to a threat but also to a refusal to follow instructions.

    b. Furthermore, that the document recording that incident does not refer to Ryle's employment history does not tend to establish that D.O.T. did not consider his history in selecting and reviewing the penalty imposed.

3. It may or may not be true, as Ryle claims, "That it is generally accepted and known that white employers can and do use unfair or disproportionate treatment to black employees." However, the question addressed by Finding 12 was whether D.O.T. had harassed Ryle because of race. Ryle's evidence on this question was conclusionary and did not cite specific incidents. The Hearing Officer did not err in finding that Ryle had not proven this claim.

4. Ryle also claims that Billy W. Jones ("Jones"), who is white, had had disputes with his supervisor and was drunk on many occasions but was not discharged. The Hearing Officer found no evidence that Jones had threatened his supervisor and that intoxication was not sufficiently similar to Ryle's offense to warrant the conclusion that the reason for the disparity in discipline was race. We are not persuaded that this was error.

5. Ryle contended at the hearing that he had been warned by Al Young ("Young") a black sub-supervisor that Ryle's supervisor, David E. Taylor ("Taylor") was out to fire him. Ryle testified that Young told him that – Howard Maxey ("Maxey") also testified that Young told him that. Taylor denied that he made such a statement or that he held such an intention Young did not testify. A determination on which party's evidence is the preponderance does not depend on counting the witnesses, but upon an evaluation of the credibility of the testimony. We are not convinced that the Hearing Officer erred.

6. There is nothing in the recommended decision to indicate that Exhibit D to Ryle's deposition was considered by the Hearing Officer. Thus Ryle's claim that that document is a fraud and a forgery cannot affect the propriety of the recommended decision.

7. As noted above, we find no error in the Hearing Officer's determination that Ryle was not harassed because of race. Accordingly, his claim that he does not know the reason for the (alleged) harassment need not be addressed.

8. Ryle claims that Dominic Mangini ("Mangini"), who testified before the Hearing Officer that Ryle had admitted during the grievance procedure to threatening Taylor, had stated otherwise during ICRC's investigation. However, Mangini denied this and no investigator testified. Accordingly, no evidence was offered at the hearing to support such a claim.

9. The Probable Cause finding is not evidence and establishes only that the complaint is not unfounded. It is insufficient grounds for reversing a recommended decision based on a hearing.

10. It is clear from the recommended decision that the Hearing Officer considered circumstantial evidence that race was a factor in Ryle's treatment. Though such evidence was not found to be sufficiently persuasive, Ryle was not required to produce direct evidence.

11. Neither the Voting Rights Act of 1965 nor the Fourteenth Amendment considerations cited by Ryle are relevant to this case.

12. We are not persuaded that "justice" requires the reversal of the recommended decision. Thus, Ryle's reliance on the notion that "justice delayed is justice denied" is misplaced.

IT IS, THEREFORE, ORDERED

1. Ryle's Objections to Recommended Findings of Fact, Conclusions of Law, and Order should be, and the same hereby are, overruled.

2. The Findings o Fact, Conclusions of Law, and order recommended by the Hearing Officer in his recommended decision, a copy of which is attached hereto and incorporated by reference herein, should be, and the same hereby are, adopted by ICRC as its own.

Dated: May 13, 1983

THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204

STATE OF INDIANA)
)
COUNTY OF MARION)

THOMAS M. RYLE,
Complainant,

DOCKET NO. EMra78010067

vs.

CITY OF INDIANAPOLIS, DEPARTMENT OF TRANSPORTATION,
Respondent.

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

A hearing was held before the undersigned Hearing Officer for the Indiana Civil Rights Commission ("ICRC") on November 19, 1982. Complainant Thomas M. Tyle ("Ryle") was represented by counsel, Mr. Bobby Potters. Respondent City of Indianapolis, Department of Transportation ("DOT") was represented by counsel, Ms. Felicia A. Wade and Ms. Constance L. Hanahan, Assistants Corporation Counsel, City-County Legal Division. Witnesses were sequestered.

Ryle testified and called Leslie Pippins ("Pippins") and Howard Maey ("Maxey") as witnesses. DOT called the following persons as witnesses: Robert David Russell, Jr. ("Russell"), David E. Taylor ("Taylor"), John J. Wooden, Marcha Bullock, Dominic R. Mangini ("Mangini"), Billy W. Jones ("Jones"), Archie Wells, Charles W,. /Roan, Edward Jackson, and Robert Busch ("Busch"). Various exhibits were identified and/or admitted. After Closing arguments were heard, the case was taken under advisement.

Having considered the Joint Stipulations (hereinafter cited as "Stip. ____"), the testimony of witnesses and documentary evidence, and the arguments of counsel, and being duly advised in the premises the Hearing Officer now recommends that ICRC enter the following Findings of Fact, Conclusions of Law, and Order.

FINDING OF FACT

1. Ryle is a Negro (hereinafter "Black") (Stip. 8) who has resided at all material times in the City of Indianapolis.

2. DOT is a department of municipal government of the consolidated City of Indianapolis, Indiana, the responsibilities of which include maintenance and cleaning of streets in the city. DOT has employed, at all material times, six (6) or more persons for wages or salary. (See Stip. 2.).

3. Rule commenced employment with DOT on October 4, 1975 (See Stip. 3). He was at all times classified as a laborer.

4. Rule was hired pursuant to the City's program under the Comprehensive Employment and Training Act ("CET"). CETA employees like Ryle were assigned, during his employment with DOT, to clean up duties at Monument Circle, the bust station, and other areas in the portion of the center city know as "the mile square".

5. There was somewhere in the neighborhood of a dozen members of this crew, give or take a few. A decided majority of these workers were blacks. Three (3) Caucasians (hereinafter "white") have been identified – Busch, Jones, and an individual named Sorenson. In practice, this crew was broken down into groups, each of which had a "group leader or "sub-supervisor" for work at various sites within the mile square.

6. Taylor, who is white (Stip. 6), supervised the operations of this crew at all times relevant hereto.

7. Ryle was discharged by Taylor on October 28, 1977 (See Stips. 3,7). A grievance concerning his discharge was filed by local 1981 of the Union of which Ryle had been a member. This grievance proceeded through Step 2 of the grievance procedure, which involved a procedure which has been called a "hearing". Ryle's grievance was denied at Step 2 and was taken no further, though there was a Step 3, and perhaps more.

8. Ryle filed the instant complaint with ICRC on February 2 1978. [The same is ninety-seven (97) days from the date the occurrence; however, unless DOT completed its grievance procedure in six (6) days or less, which is unlikely, it is within ninety (90) days from the termination of a published and meaningful grievance procedure and is, therefore, timely under IC 22-9-1-3(o).]

9. Ryle's complaint alleges unlawful discrimination because of race with respect to both his termination and alleged harassment.

10. Any harassment which did occur obviously occurred on or before October 28, 1977. Ryle's complaint, then, was filed more than ninety (90) days from the date of the occurrence of the alleged harassment. There is no evidence of any grievance procedure contesting harassment being initiated on /Ryle's behalf; however, DOT has raised no question concerning the timeliness of the harassment aspect of Ryle's complaint.

11. It is undisputed that Ryle was discharged by DOT. The crucial issue is whether he was discharged because of race. Thus, Taylor's prior treatment of him must be considered as relating to Taylor's motivation in discharging Rule, even if such prior treatment could not be the subject of a remedy.

12. Rule's claim of harassment by Taylor is somewhat general in nature. He claims that Taylor, when present with Rule's group:

a. Watched him all the time;

b. Always called him to do jobs, that is, that Taylor singled him out; and

c. Wrote him up, or reprimanded him, several times.

13. Taylor was described by several witnesses as a strict, but fair, supervisor who operated “by the book”. Thus, that he supervised Ryle closely and issued him written reprimands has no tendency to establish that Ryle was discrimination against for any reason.

14. Ryle has neither provided evidence of specific incidents wherein he was singled out by Taylor to perform tasks, provided evidence of the number of each incidents, nor provided evidence that race was a factor in Taylor’s decision to assign Ryle to perform those tasks.

15. Ryle had not proven by a preponderance of the evidence that Taylor harassed him because of race.

16. On the day before Ryle was terminated, he left his work site without permission in order to use the restroom facilities of a downtown establishment. He returned about 3:30 pm and was given a written reprimand by Taylor. Further, he was not paid for time after 2:30 pm on that day. On the way back, Ryle spoke with his wife, a white, and their conversation was apparently seen, if not hear, by Taylor. There is some dispute about the following details.

a. How long Ryle was gone. Ryle contends, that he was gone about half an hour while Taylor claims he was gone at least an hour.

b. Whether anyone was with Ryle. Rule contends, and Taylor denies, that an employee named Nichols was with him. (It is agreed that Nichols is black).

17. The next day, Taylor told Ryle to report to a different group than the one to which he had normally been assigned. Ryle’s response to this directive is in dispute, the dispute summarized below:

a. Rule contends that he thought this was an effort by Taylor to set him up for discharge. (Ryle did not like the group leader, or sub-supervisor, to whom he was to report. Ryle does not recall the individual’s name). Rule contends that in response, he went to see a Union Steward. He denies making the statements attributed to him by Taylor

b. Taylor says that Ryle told him that discipline was jive, that he (Taylor) was a punk, and that they could settle this outside.

Immediately following this incident, Ryle was terminated.

18. Ryle claims that Taylor set out to fire him because Taylor was upset about Ryle's interracial marriage. This claim plausible enough in theory, is not supported by sufficient credible evidence.

a. The evidence supporting this claim ultimately rests on an alleged conversation in which Taylor supposedly made such an assertion to Al Young ("Young"), a group leader or sub-supervisor. Taylor, as would be expected even if culpable, denies saying any such thing. Young did not testify. Maxey testified that he was told something to the effect by Young. Ryle also testified that he was warned by Young that Taylor was out to get him fired because of his (Ryle's) interracial marriage.

b. Thus, this claim depends not only on Young's accurate recounting of the alleged conversation to Ryle and/or Maxey, but also their accurate recounting of his reports to them. In the absence of testimony, subject to cross-examination, by Young, a finding that Taylor expressed such an intention and motivation is not appropriate.

19. Mangini testified hat Ryle admitted to having threatened Taylor at the grievance "hearing". Mangini's testimony to that effect is credible.

20. Ryle also introduced evidence concerning Jones, a white who was not discharged, apparently contending that Jones is a similarly situated employee treated less harshly than he and, therefore, that the reason(s) offered for Ryle's discharge were in reality pretexts for discrimination. The evidence does not establish that Jones is a "similarly situated" employee.

a. Though there is some evidence of disputes between Jones and Taylor, there is no evidence that Jones ever threatened Taylor.

b. There is also some evidence that Jones may have drunk alcoholic beverages on the job, even to the point of intoxication. While it is true that DOT's policies on discipline would, at least as written, have allowed DOT to discharge Jones for these acts [See Jt. Ex. H, Section 3,6,6 (H)], the failure to do so does not justify, on this record, an inference they some race related factor explains the difference between DOT's treatment of Jones and Ryle.

21. DOT's supervisors did have some latitude in determining what penalty to impose for a particular offense. Such latitude does provide an opportunity for racial discrimination; however, the evidence does support Ryle's contention that it was so used in his case.

22. There is no evidence that any employee of DOT has ever threatened a supervisor and retained his (or her) job. Mangini, in his capacity as a Union Official, knew of no such case.

23. There have been some employees of DOT who have threatened their supervisor who have been allowed to resign rather than being terminated, an advantage Ryle was not allowed. There is no evidence of the racial composition of this group of employees.

24. Any Conclusion of Law which should have been deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. ICRC has jurisdiction over the subject matter and the parties. [This conclusion assumes that timeliness is not a condition precedent to ICRC's subject matter jurisdiction but instead is an affirmative defense analogous to a statute of limitations as in Ind. R. Tr. P. 8(C). If the latter, the question can be, and in this case was, waived. Note that timeliness is an issue only as to the harassment aspect of Ryle's complaint. This can be assumed, in this case, as the propriety of the answer does not affect the result.]

2. DOT is an organized group of persons and is therefore a "person" as that term is defined in IC 22-9-1-3(a). Cf, 910 IAC 1-1-1(A), *Indiana State Highway Commission v. Indiana Civil Rights Commission* ____Ind, App. ____, 424 N.E. 2d 1024 (1981).

3. DOT is an "employer". IC 22-9-1-3(h) (i), cf. 910 IAC 1-1-1(H), (I).

4. In determining whether an unlawful act of racial discrimination has occurred, the relevant statutory provision reads:

> (1) the term "discriminatory practice" means the exclusion of a person, from equal opportunities because of race….Every discriminatory practice relating to …employment…shall be considered unlawful unless it is specifically exempted by this chapter. IC 22-9-1-3(I).

5. In interpreting the Indiana Civil Rights Law's prohibition of discriminatory practices, it is appropriate to consult case decided under Title VII of the Civil Rights ct of 1964, 42 U.S.C. §2000e ("Title VII"). *Indiana Bell Telephone Company Incorporated v. Boyd* ____Ind. App. ____, 421 N.E.2d 660, 26 FEP Cases 940 (1981), *Indiana Civil Rights Commission v. Sutherland Lumber Company* ____Ind. App. ____, 394 N.E.2d 949, 26 FEP Cases 835 (1979).

6. Under Title VII, the burden an allocation of proof is in three phases, which progressively narrow the inquiry. Those are:

a. The plaintiff (here, complainant) must prove a *prima facie* case. The elements of a *prima facie* case, of course, vary depending on the nature of the challenged employment decision (that is, hiring, promotion, discharge, or discipline); however, the clear purpose of the *prima facie* case is only to refute the most common reasons for a particular adverse decision. *Texas Department of Community Affairs v. Burdine* 101 S.Ct. 1089, 25 FEP Cases 113 (1981) Proof of a *prima facie* case establishes a rebuttable presumption that the adverse action was taken for a prohibited reason *Id.*, n.7, 101 S.Ct. at 1094, 25 FEP Cases at 116 and, therefore.

b. Shifts the burden of coming forward with evidence that the action was taken for (a) legitimate, non-discriminatory reason(s) to the employer. *Id.* if this burden is met.

c. The plaintiff (complainant) must be given a full and fair opportunity to demonstrate that the proffered reason is a pretext for prohibited discrimination. This may be done either by persuading the court (here, ICRC) that a discriminatory reason more likely motivated the employer or that the proffered reason is unworthy of credence. *McDonnell Douglas Corp. v. Green* 411 Y,S, 792 at 804-805, 5 FEP Cases 965 at 970 (1973) (cited with approval in *Burdine* at 101 S. Ct. 1095, 25 FEP Cases 116). The burden of persuasion remains at all times with the plaintiff (complainant). *Burdine, supra.*

7. With respect to Ryle's discharge, the dispute has focused on whether DOT's stated reasons for discharging him were pretextual. The instant case does not require a determination of what constitutes, or whether Ryle has proven, a *prima facie* case as such a decision would not affect the result.

8. Ryle ha not proven the reasons offered by DOT to have been pretexts for discrimination because of race by showing them to be unworthy of credence, by showing that any similarly situated white was treated more favorably, or otherwise.

9. Ryle has not proven that he was harassed by his supervisor because or race.

10. DOT did not commit a discriminatory practice against Ryle by harassing him or by discharging him.

11. If ICRC finds a person has not committed an unlawful discriminatory practice, it must dismiss the complaint as against said person. IC 22-9-1-6(k) (3).

12. Any Finding of Fact which should have been deemed a Conclusion of Law is hereby adopted as such.

ORDER

1. Ryle's complaint should be, and the same hereby, is dismissed.

Dated: December 16, 1982